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The Concept Of Corruption According To The Perspective Of Islamic Criminal Law

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ABSTRACT

Corruption comes from the Latin *corruptio* and *corruptus* which means to bribe and *corrumpere* which means to destroy. Corruption is included in *jarîmah*. *Jarîmah* is: "Prohibitions of *syara'*, namely; Threats with '*uqûbat had* or *ta'zir*". *Ta'zir* is: "'*uqûbat* determined by the authorities in order to refuse thinning and prevent crime". Corruption in Indonesian law is: "Unlawfully committing acts of enriching oneself or another person or a corporation that can harm state finances or the state economy". While the terms that are close to corruption in Islamic studies are: "*ghulûl*, *ikhtilâs*, *risywah* and *al-fasad* and". Corruption according to *fiqh* is: "It is a *jarîmah* or a modern and extraordinary crime for which there is no agreement on the terms and definitions. While the '*uqûbat* is *ta'zîr* which is returned to *waliyul amri*".

Key Words: Concept, Corruption, Criminal, Law, Islamic

INTRODUCTION

Corruption is a very old human culture. This corruption is practiced from time to time so that it becomes a culture that is considered normal, even though this act is an extraordinary crime. This culture of corruption has been deeply embedded in most state officials, including Indonesia and Aceh in particular. This crime was committed because of the possible concept (H. L. A. Hart: 2013), corruption that is so unclear, whether it is in the form of a term, definition or meaning or its '*uqûbat*. The problem of corruption is never ending, if we use an analogy with corruption it is just like the branches, twigs and leaves of a tree where there are more and more cases. This corruption case, especially in

Indonesia, is already very disturbing, like an acute disease that is very difficult to cure, starting from the orla (old order), orba (new order) period, even to the orre (reformation order) period and the present (reformation era). millennial). Its historical trajectory is getting longer and longer to be unraveled, starting from the time when the first humans were revealed to this planet, namely the Prophet Adam, to the present day.

The term corruption is thought to have been born during the caliphate of Umar inbu Khatab r.a. However, the term corruption that already exists, generally only revolves around three terms, although many other words are used for the term. The three words are al-ghulūl, al-riswah and al-ikhtilās. At that time the term used for corruption referred to today is al-ghulul and the term corruption is not yet known in the current modern context. The word al-ghulūl is used in Indonesia, the word al-riswah is used in Saudi Arabia and Malaysia, while the word al-ikhtilās is used in Egypt (Muslim Ibrahim: 2008).

Since 1998, eradicating corruption has been one of the main reform agendas state administration. Quantitatively, it shows an improvement, but qualitatively it seems that the fulfillment of the public's sense of justice is far from being expected. Public dissatisfaction with the uqūbat (punishment) for perpetrators of corruption is an indicator of the unclear concept (system) of law enforcement for corruption (Soejono Soekarno: 2004) dan (Uzai Fauzan: 2006) dan juga (Mahrus Ali: 2013).

The crime of corruption is an extraordinary crime, which cannot be tolerated. This crime was committed, perhaps because there was no legal firmness from the government. It may also be because the concept of corruption in Indonesia is not yet clear, whether it's in the form of a term, definition as well as the threat of punishment (the type of ta'zīr). So that the threat of corruption according to Islamic criminal law cannot be included in the current draft law on eradicating criminal acts of corruption, especially in Indonesia, and especially in Nanggroe Aceh Darussalam.

RESEARCH METHODS

The research study method used is a qualitative library research method (Ratnaningtyas, E. M., 2023). The main reference materials are the Qur'an and al-Hadith, books, journals, articles, and other necessary reference materials. Then do a comprehensive descriptive comparative analysis. The research technique here is to use library research methods, which are carried out by searching for research data or information through reading, be it books, journals or others deemed necessary as references and publication materials available in the library (Rusady Ruslan: 2004).

Library research is a research that focuses on the library. Library research is

a general process carried out to obtain previous theories (Consuelo G. Sevilla, Dkk: 1993). While quantitative is a study that focuses on the weight of something. Descriptive is a description of something, analysis is analyzing something deductively and comprehensively (overall). Analytical, namely first, analyze various data on corruption that have been collected as a basis for drawing conclusions (Anton Bakker, et. Al: 1990). Meanwhile, deductive reasoning is a framework of thinking based on the general concept of corruption and then formulated in the form of conclusions that are specific (Anton Bakker, et. Al: 1990).

This type of research is called qualitative research juridical, (Sugiono: 2010) dan (Leksi J. Moleong: 2001), that all decisions relate to the provision of principles and norms for traditional and contemporary fiqh issues that are closely related to analytical methods (Rosady Ruslan: 2004). The data obtained will be analyzed using the benchmark method of analysis of ta'zîr theory and the theory of criminal law in Indonesia with fiqh.

This research also includes legal research (normative law), (Sidarta: 2013), also called doctrinal normative research. In addition to using the research methods that have been mentioned, the author also uses qualitative research methods normative (Boedi Abdullah dan Beni Saebani: 2014). While the nature of this research is descriptive analysis. In describing the data using the theory of criminal law in Indonesia and fiqh and ta'zîr theory. So that the data can be arranged systematically and in accordance with the writing variables in a descriptive analysis (Rosady Ruslan: 2004).

Doctrinal normative this is also prescriptive, because it seeks to propose the concept of legal norms, (Sejono eokarno: 2010), ranging from theories, terms, ta'rif (definitions), requirements and pillars of criminal acts (corruption) that have been previously regulated in the corruption law from various disciplines. related science that can show or explain the weaknesses of existing constructions and can be the basis of thinking for formulating new normative constructs (Peter Mahmud Marzuki: 2006).

RESULTS AND DISCUSSION

This study is to answer the three problems studied regarding "The Concept of Corruption According to the Perspective of Islamic Criminal Law". The answers found, first; Jarîmah is: "Prohibitions of syara', namely; Threats with 'uqûbat had or ta'zir". Ta'zir is: "'uqûbat determined by the authorities in order to refuse thinning and prevent crime". Jarîmah ta'zir is: "A jarîmah whose 'uqûbat has no provisions in the texts". Second; Corruption in Indonesian law is: "Unlawfully committing acts of enriching oneself or another person or a corporation that can harm state finances or the state economy". While the terms that are close

to corruption in Islamic studies are: "ghulūl, ikhtilās, risywah and al- fasad". And third; Corruption according to fiqh is: "It is a jarimah or a modern and extraordinary crime for which there is no agreement on the terms and definitions. While the 'uqūbat is ta'zīr which is returned to waliyul amri".

In the Islamic world, the birth of the crime of corruption cannot be ascertained, as well as the use of the term. However, at the time of the Prophet, a known term that was close to the pattern of corruption in modern times today was "ghulūl". The term ghulūl, when compared with corruption in the modern context and in the context of positive law, is debatable. According to some scientists, the term corruption was born during the time of the Prophet Muhammad, s.a.w. namely at the beginning of the Medina period. (At-Tabari: 1405 H), As-Sa'labi: t.th) dan Al-Qurtubi: 1372 H). According to Hasbi Amiruddin described in the book "Umar Bin Khatab and the Eradication of Corruption", it is not clear when the term corruption appeared, but suggests that corruption was born during the caliphate Umar Bin Khatab r.a. Reign (Hasbi Amiruddin: 2009).

The meaning of corruption according to fiqh basically refers to matters relating to crimes against state money, when viewed from the point of view of classical fiqh. However, when viewed in the context of modern jurisprudence, the meaning of corruption is very broad, so the terminology varies, and no agreement has been found on the term. However, a very close meaning for the term corruption when viewed from the perspective of classical fiqh is ghulūl. However, the Indonesian state uses the meaning of corruption with the term ghulūl, Egypt gives the meaning with the term ikhtilās, while Malaysia and Saudi Arabia give the meaning with the meaning of the term risywah (Muslim Ibrahim: 2008).

But in fact, corruption has started to exist since the first humans (humans) lived on the surface of this earth, namely since the Prophet Adam a.s. already existed, namely when their children Qabil and Abel performed qurban worship to Allah SWT. This history of Qabil and Abel shows that the history of corruption has begun to exist. However, the history had not been written and could not be written at that time because there were no humans who wrote at that time, and at that time they did not know writing. Even so, this history was enshrined by Allah SWT in the Qur'an which was revealed to the Prophet Muhammad SAW who became a guide for His people at the end of time.

The description above shows that the history of corruption when it was born is blurred. Things like this should not happen, because they have an impact on the world of education which must be completed. Furthermore, it can be a dilemma, especially for scientists who want to make a study on corruption, specifically corruption according to law criminal Islam. However, December 9 is celebrated as World Corruption Day. However, when the term and history of corruption was born, no concrete data has been found.

The meaning of corruption in Indonesian law is explained in a formal juridical formulation, i.e. the definition is stipulated in the law concerning the eradication of criminal acts of corruption. This law is Law Number 31 of 1999. It was further amended by Law Number 20 of 2001. The meaning and definition is: "Unlawfully committing an act of enriching oneself or another person or a corporation that can harm the state's finances or country's economy". The definition that has been mentioned is not in the context of Islamic criminal law and this definition cannot be fully used because it is still very general and cannot be considered complete.

Corruption is an act that is classified as *jarimah* (criminal act) and is a very extraordinary crime, so that it can damage a civilization and can lead to the destruction of a country. Criminal acts in terms of *fiqh* (Islamic law) are called *jinayah*, but scholars often also use the word *jarimah*. A new act can be called a *jarimah* or a criminal act, it must be fulfilled with several conditions and pillars. Criminal comes from the word *straf*, often referred to as punishment. The term criminal is more appropriate than the term punishment because the law is usually a translation of *recht*. It can be said that the term criminal in a narrow sense is related to criminal law.

Ta'zîr language means *al-man'u* which means prevention. Lafadz ta'zîr comes from the word *azzara* which means *man'u wa radda* (to prevent and reject), ta'zir can mean *addaba* (educate) or *azzamu wa waqra* which means to glorify and respect (Ibrahim Unai: t.th). According to the term ta'zîr means *al-ta'dîb* (education) and *al-tankil* (restraint). The *syar'* definition of ta'zîr is the sanction that is set for immoral acts in which there is no limit and *kifarat* (Asadullah Al-Faruq: 2009). Ta'zîr is a punishment for which there is no clear text in the Qur'an and Al-Hadith so it must be determined by the government or *waliyul amri* by means of *ijtihad*. All the provisions were returned to them to give sanctions or punishments to the perpetrators of crimes who were subject to ta'zîr punishment.

Ta'zîr is part of *'uqubat* (punishment) in Islamic criminal law or retaliation for something *jarimah* (error) in the form of a disobedience that has been committed by someone. There are several forms of *'uqubat* in Islamic criminal law: first; *jarimah hudud*, second; *jarimah diyat* or *qisas*, and third; *jarimah ta'zîr*. Ta'zîr is a predetermined punishment for *jarimah ta'zîr*. The forms vary, but the determination is left to the government or the authorities, namely the legislative body or judges (*waliyul amri* or imam).

'Uqubat (punishment) ta'zîr in education has a broad meaning, ranging from light punishment to severe punishment, from a stinging glance to a rather painful blow. Even though there are many kinds of punishment that are painful, both soul and body. The meaning of the word ta'zîr can refer to the Arabic-

Indonesian Dictionary, namely reproach; help, revile; educate, chastise him, insult, help and defend him, rebuke, reprimand (S. Akar: 2010).

According to Al-Mawardi defines ta'zir as: "ta'zir is an educational punishment for sinful acts (immorality) whose punishment has not been determined by syara'" (Al-Mawardi: 1996). Meanwhile, according to Wahbah al-Zuhaili, which is similar to al-Mawardi, namely ta'zir according to syara' is a punishment determined for immoral or jinayah acts that are not subject to had or kifarati.

From various meanings, the most relevant meanings of ta'zir are man'u wa radda (prevent and reject) and ta'dib (educate). This understanding is in accordance with what was stated by Abdul Qadir Audah (Abdul Qadir Audah: 1963) and Wahbah al-Zuhaili, ta'zir is defined by preventing and refusing. Because he can prevent the perpetrator from repeating his actions. Ta'zir is interpreted as educating because ta'zir is intended to educate and improve behavior so that he realizes that his finger's actions are wrong according to religion and then he doesn't want to do it again.

The enforcement of a law in a country, especially an Islamic state, must be in accordance with the will of shari'a as the determinant of a law, namely Allah (SWT) and His Prophet Muhammad (SAW). When the punishment is not mentioned or determined by the shari'ah, be it in the Qur'an and Al-Hadith, then the waliyul amri or the government as an extension of the arm or caliph of Allah (SWT) and His Messenger, they must determine the law in accordance with shari'a will.

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With that, so that this law can be enforced properly and can bring prosperity and prosperity to society in general and to adherents of the Islamic religion in particular. then it becomes a country that is under the auspices of Allah

and His Messenger, namely a country that is blessed by both of them, because the law that is enforced is in accordance with his will.

In the Islamic criminal law literature there is no specific term about corruption, but corruption can be categorized as a criminal act (*ma'shiyāt*) (Meumada: 2009). There are many terms used for it. In this case the jurists there is no agreement, both in classical *fiqh* books and in modern *fiqh* books. Those jurists only classify these actions into *jinayāt* which is a *jarîmah* or a *ma'shiyat* (Muslim Ibrahim: 2008).

In general, there are 3 (three) terms of corruption that are often used in Islamic criminal law: first; sincerity, second; *risywah* and third; *ghulul*. However, there are also other terms used, such as: *al-sarikah*, *al-khiânah*, *al-ghasy*, and so on. All of these terms indicate that in Islamic criminal law there is not yet a definite (clear) term for corruption, thus causing ambiguity in the *ta'rif* (definition) or the intended corruption terminology.

In the Indonesian dictionary, one of the etymological meanings of corruption is "damaged". Therefore, the term for corruption according to Islamic criminal law is more appropriate if it is termed "*al-fasad*". This term is based on the Qur'an al-Karim surah Al-Qasas verse 77 which means: "And seek in what Allah has bestowed upon you (happiness) the land of the hereafter, and do not forget your share of worldly (pleasures) and do good. to others) as Allah has done good to you, and do not do mischief on the earth. Verily, Allah does not like those who do mischief" (Kantor Wilayah Kementrian Agama Aceh: 2011). Thus the term *al-fasad* for the criminal act of corruption is more suitable and appropriate so that the concept of corruption according to Islamic criminal law can be clearer.

In Islamic criminal law there is no specific definition of corruption because there is no specific term for it. However, in the Egyptian State Law No. 1 of 1999 paragraphs 1 and 2, defines corruption in terms of *ikhtilas*, the literal meaning is: "pickpocketing something very quickly". Meanwhile, according to the term *qanun jinayat* is: "taking property from a place of storage, including stealing, but between pickpockets and stealing are not the same in terms and pillars, then stealing is taking/moving other people's property without their permission, while pickpocketing is taking people's property who has not been entrusted to him" (Muslim Ibrahim: 2008).

Furthermore, in anti-corruption *fiqh*, it contains the core of Islamic law, criteria for criminal acts of corruption, and criminal sanctions for corruptors (KPK: 2007) Thus, according to Syed Hussein Alatas, there are three types of phenomena included in the term corruption: bribery (*briberri*), extortion (*extortion*), and nepotism. They are not the same, even if they are the same, but they are not classified under one title. In essence, there is a common thread that connects the three types of phenomena. It means that corruption is the same in terms of its

name, but it is not the same in terms of its type and method (Syed Hussein Alatas: 1986)

The definition of risywah in terms of terminology is: "A gift in the form of property or other objects to the owner of the position or the holder of policy/power to justify (or launch) what is vanity and invalidate the right or get benefits from legal (illegal) ways". Meanwhile, Islamic criminal law in Indonesia tends to define and give meaning to criminal acts of corruption with *ghulūl* words. The term *ghulūl* in defining and giving its meaning is still unclear. Among the meanings of *ghull* is treason, as for the term, *ghulūl* is taking something from *ghanîmah* (spoils of war) before distribution. Imam Nawawi rahimahullah said: "The origin of the meaning of *ghulūl* is absolute betrayal, then the term *ghulūl* is specifically used with the meaning of treason in matters of *ghulmah*".

Ghulūl according to Imam Ibn Qudamah rahimahullah is: "The person who performs *ghull* is the person who is placed by the *ghulmah* whom he has succeeded in supporting, so that the imam (leader) does not know it, and he does not collect it with the *ghulmah*" (Ibnu Qudamah: t.th) dan Al-Dzahabi: t.th). Also included in the *ghulul* is someone who takes something from the *baitul mal* of the Muslims, or *zakat* assets without rights. Imam Al-Dzahabi rahimahullah said: "The 22nd big sin is *ghulul* from *ghanîmah*, namely from the *baitul mal* of the Muslims, or *zakat* assets" (Al-Dzahabi: t.th) dan (Abdul Qadir Audah: 1963). Likewise, gifts given to employees include *ghulul*. From the description above, it can be concluded that the term that has been used in *fiqh* and is close to corruption is "*ghulūl*".

Criminal acts in the *hudd* category have legal provisions in the texts. According to the majority of scholars, there are seven kinds, namely adultery, *qadzaf* (accusing adultery), drinking liquor, stealing, *al-hirābah* (robbery), apostasy and *al-baghyu* (rebellion) While those included in the *Jarîmah ta'zîr* (Abdul Qadir Audah: 1963), dan (Sayid Sabiq: 1983), dan juga (Wahbah Al-Zuhaili, 1989). There is no concrete legal provision, including corruption.

In 1960, Indonesia was determined to eradicate corruption, with the issuance of a Government Regulation in lieu of Law Number 24 of 1960 concerning the Investigation, Prosecution and Examination of Criminal Acts of Corruption. According to the Government Regulation in lieu of the Act above, and all laws concerning criminal acts of corruption are to explain the meaning of corruption, the forms of corruption and the threat of punishment, namely in the form of imprisonment (Abdul Qadir Audah: 1963) dan (Jurnal Pro Justitia: 2008).

According to the *fuqaha*, the punishment or criminal threat for the perpetrators of corruption is in the form of *ta'zir*. However, it is not explained how the *ta'zir* should be imposed on the perpetrators of the corruption. Likewise, the Cairo Egypt al-Azhar Research Institute, in its fatwa stated that corruption in its

current form (modern fiqh), is generally not included in the *hudd.* or *qishāsh*, therefore the sanction for the crime is *ta'zīr*, which is entirely left to the judge (*waliyyul amri*) to determine the appropriate sanctions (Muslim Ibrahim: 2008).

CONCLUSION

The concept of corruption according to the perspective of Islamic criminal law is not yet clear, both in terms, definitions (*ta'rif*), and *'uqūbat* (criminal threats). The *'Uqbat* is in the form of *ta'zīr* which has no clarity, meaning what type of *ta'zīr* should be imposed on the perpetrators of criminal acts of corruption according to Islamic criminal law. Corruption is a very old human culture. The term corruption comes from the Latin *corruptio* and *corruptus* which means to bribe and *corrumpere* which means to destroy. Corruption is included in *jarīmah*. *Jarīmah* is: "Prohibitions of *syara'*, namely; Threats with *'uqūbat had* or *ta'zir*". *Ta'zir* is: "'*uqūbat* determined by the authorities in order to refuse thinning and prevent crime". Corruption in Indonesian law is: "Unlawfully committing acts of enriching oneself or another person or a corporation that can harm state finances or the state economy". While corruption according to Islamic criminal law is more to *al-fasad*. The terms that are close to corruption in Islamic studies are: "*ghulūl, ikhtilās, risywah* and *al-fasad* and". Corruption according to fiqh is: "It is a *jarīmah* or a modern and extraordinary crime for which there is no agreement on the terms and definitions. While the *'uqūbat* is *ta'zīr* which is returned to *waliyul amri*".

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